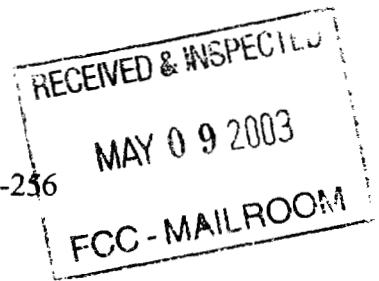


Before the  
Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for	)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price	)	
Cap Incumbent Local Exchange Carriers and	)	
Interexchange Carriers	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	



### THIRD ORDER ON RECONSIDERATION

**Adopted:** April 30, 2003

**Released:** May 8, 2003

By the Commission: Commissioner Copps issuing a separate statement.

1. In this Order, we address a Petition for Reconsideration of the *MAG Order*<sup>1</sup> filed by the National Exchange Carrier Association (NECA), the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United States Telecom Association (collectively, the Joint Petitioners).<sup>2</sup> The Joint Petitioners raise issues concerning the filing requirements for Interstate Common Line Support (ICLS), the new universal service support mechanism established in the *MAG Order*. In response to the concerns raised by the Joint Petitioners, we grant their request to amend section 54.903(a)(4) of our rules to move the deadline for filing actual common line cost and revenue data from July 31<sup>st</sup> to December 31<sup>st</sup> of each year. We also amend section 54.903(a)(3) of our rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30<sup>th</sup> of each year. As discussed below, these changes will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. Additionally, we adopt several minor amendments to sections 54.307, 54.902, and 54.903 of our rules in response to issues raised by the Joint Petitioners and on our own motion.

<sup>1</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent LEC and IXC's*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*MAG Order*), recon. pending.

<sup>2</sup> NECA et al., Petition for Reconsideration and/or Clarification, filed December 31, 2001 (Joint Petition for Reconsideration). The Commission will address petitions for reconsideration of the *MAG Order* filed by other parties, as well as outstanding issues from the companion *MAG Further Notice*, in a separate, forthcoming order.

## I. BACKGROUND

2. In the *MAG Order*, the Commission created a new, explicit universal service support mechanism, ICLS, to replace implicit support in the access rate structure of rate-of-return carriers.<sup>3</sup> ICLS replaces the carrier common line charge, and thereby permits each carrier to recover its common line revenue requirement, while ensuring that its subscriber line charges remain affordable to its customers.<sup>4</sup> This makes possible the reduction of per-minute access rates toward cost-based levels, which in turn encourages the provision of affordable and competitive long-distance services in rural areas.<sup>5</sup> The ICLS mechanism was implemented beginning on July 1, 2002.

3. The ICLS funding year is from July 1<sup>st</sup> through June 30<sup>th</sup> of the following calendar year, consistent with the tariff year for rate-of-return carriers.<sup>6</sup> In the *MAG Order*, the Commission designed a multi-step system for calculating and distributing ICLS. The Commission sought to limit as much as possible the administrative burdens associated with the new ICLS mechanism, while promoting accurate and efficient distribution of support.<sup>7</sup> First, on the March 31<sup>st</sup> prior to the ICLS funding year, each carrier must file projected cost and revenue data for the upcoming funding year with the Administrator.<sup>8</sup> Each carrier may correct the data for any reason until April 10<sup>th</sup> prior to the start of the funding year.<sup>9</sup> The Administrator uses the projected data to provide ICLS on a prospective basis over the course of the ICLS funding year.<sup>10</sup> Second, on July 31<sup>st</sup> each carrier must file actual cost and revenue data covering the prior calendar year.<sup>11</sup> The Administrator uses this data to determine the amount of ICLS for which the carrier is finally eligible during the prior calendar year and calculates a “true-up amount.”<sup>12</sup> The true-up amount is the difference between the amount the carrier received prospectively during the calendar year based on projected data and the amount for which it is finally eligible based on

<sup>3</sup> *MAG Order*, 16 FCC Rcd at 19667-69 paras. 128-30.

<sup>4</sup> *Id.* at 19664 para. 120. A carrier is eligible for ICLS equal to the difference between its common line revenue requirement and the total of its maximum allowable SLC revenues, transitional carrier common line charge revenues, revenues from special access surcharges, line port costs in excess of basic analog service, and Long Term Support. 47 C.F.R. § 54.901(a).

<sup>5</sup> *Id.* at 19643-44 para. 63, 19664 para. 120.

<sup>6</sup> *Id.* at 19682-83 paras. 162-64.

<sup>7</sup> *Id.* at 19681 para. 160.

<sup>8</sup> 47 C.F.R. § 54.903(a)(3). The Commission named the Universal Service Administrative Company (USAC) the Administrator of the ICLS mechanism. *MAG Order*, 16 FCC Rcd at 19681 para. 159.

<sup>9</sup> 47 C.F.R. § 54.903(a)(3).

<sup>10</sup> 47 C.F.R. § 54.903(b)(1), (5).

<sup>11</sup> 47 C.F.R. § 54.903(a)(4).

<sup>12</sup> 47 C.F.R. § 54.903(b)(1), (3), (5).

actual data. Third, the Administrator adjusts ICLS payments provided to the carrier over the course of the following calendar year to reflect the true-up amount.<sup>13</sup>

4. This multi-step system achieves the Commission's goals in a number of ways. First, the reliance on actual cost and revenue data to calculate a final ICLS amount ensures that each rate-of-return carrier continues to recover the revenues it is permitted pursuant to rate-of-return regulation, and that no carrier recovers more revenues than permitted at the expense of the universal service fund.<sup>14</sup> Second, the use of projected data to provide ICLS prevents potential cash-flow problems that might occur if no ICLS were available to carriers until actual data were available.<sup>15</sup> Third, the filing schedule is intended to reduce administrative burdens on carriers by corresponding to their existing schedules for filing access tariff revisions and high-cost loop support data.<sup>16</sup>

## II. DISCUSSION

5. *Filing of Actual Cost and Revenue Data.* On reconsideration, we grant the Joint Petitioners' request to change the filing date for actual cost and revenue data for the prior calendar year from July 31<sup>st</sup> to December 31<sup>st</sup>.<sup>17</sup> We find that changing the filing date for actual cost and revenue data to December 31<sup>st</sup> will better serve the Commission's goals of minimizing administrative burdens on carriers and promoting accurate and efficient distribution of ICLS. First, a December 31<sup>st</sup> filing date will reduce administrative costs. The Joint Petitioners contend that, based on NECA's experience with the common line pooling process, many small carriers would have difficulty completing accurate cost studies by July 31<sup>st</sup>, whereas carriers have historically complied with a December 31<sup>st</sup> deadline.<sup>18</sup> Moving the filing deadline to December 31<sup>st</sup> will reduce burdens on carriers and minimize the potential need for late filings and corrections. Second, the resulting delay in the initiation of adjustments to ICLS as part of the ICLS true-up process will be mitigated by the measures we adopt below to improve the accuracy

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<sup>13</sup> *Id.* This true-up may result in higher payments where the carrier's projections underestimated the amount of ICLS required or lower payments where the carrier's projections overestimated its requirements.

<sup>14</sup> *MAG Order*, 16 FCC Rcd at 19684 para. 166.

<sup>15</sup> *Id.* at 19683 para. 164.

<sup>16</sup> *Id.* at 19681-85 paras. 160, 164, 167. Thus, the Commission patterned the ICLS funding year on the existing tariff year for which carriers already developed similar projected data, while final ICLS is based on the calendar year for which carriers already develop cost studies and file actual cost data with NECA for high-cost loop support. *Id.*

<sup>17</sup> See 47 C.F.R. § 54.903(a)(4); Joint Petition for Reconsideration at 2, Attachment at 2.

<sup>18</sup> *Id.*, Attachment at 2. In adopting the July 31<sup>st</sup> filing date in the *MAG Order*, the Commission noted that most rate-of-return carriers also file actual cost data necessary to calculate Part 36 high-cost loop support on July 31<sup>st</sup>. *MAG Order*, 16 FCC Rcd at 19684-85 para. 167. The data submitted to calculate high-cost loop support, however, is not subject to jurisdictional separations. See 47 C.F.R. § 36.611 (requiring the filing of unseparated cost data). The cost data that is required for the ICLS mechanism must be separated, and therefore requires additional effort to develop. See Joint Petition for Reconsideration, Attachment at 2.

of ICLS payments.<sup>19</sup> In particular, permitting carriers to revise their projected data for the current and upcoming ICLS funding years on June 30<sup>th</sup> will mitigate the lag between projected and actual data filings and give carriers more meaningful opportunities to revise projections to adjust ICLS where necessary. Finally, moving the deadline for filing actual cost and revenue data to December 31<sup>st</sup> will not result in any delay in the completion of the ICLS true-up process. Under the current rules, ICLS true-up payments are spread over the calendar year following the filing of actual data.<sup>20</sup> We conclude that ICLS true-up payments instead can be distributed over the final two quarters of the calendar year without affecting fund stability.<sup>21</sup>

6. *Voluntary Updates of Projected Cost and Revenue Data.* We also conclude that certain modifications to section 54.903(a)(3), governing the filing of projected cost and revenue data, are warranted.<sup>22</sup> Under the rules adopted in the *MAG Order*, carriers that wish to receive ICLS must, on March 31<sup>st</sup>, file projected data for the upcoming July 1<sup>st</sup> to June 30<sup>th</sup> funding year and may correct that data until April 10<sup>th</sup>.<sup>23</sup> We conclude that permitting carriers at their discretion to correct their projected data for the upcoming funding year until June 30<sup>th</sup> would better promote the accurate and efficient distribution of ICLS without increasing administrative burdens. Additionally, we provide a voluntary opportunity for rate-of-return carriers to update on June 30<sup>th</sup> their projected data for the ICLS funding year ending on that date will promote the accurate and efficient distribution of ICLS.

7. We will amend section 54.903(a)(3) of our rules for voluntarily updating the March 31<sup>st</sup> filing to replace the existing April 10<sup>th</sup> deadline with a June 30<sup>th</sup> deadline.<sup>24</sup> We agree with NECA that this deadline extension will provide a more meaningful opportunity for carriers to revise their projections and, therefore, will increase the accuracy of ICLS for the coming funding year.<sup>25</sup> Two major factors potentially affecting projections will be resolved by the June 30<sup>th</sup> prior

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<sup>19</sup> We anticipate that moving the filing deadline from July 31<sup>st</sup> to December 31<sup>st</sup> will delay the initiation of the ICLS true-up process by two quarters. After receiving the actual cost and revenue data from carriers, the Administrator must process and validate the data to fulfill its obligation to prevent waste, fraud, and abuse. The Administrator must then ensure that it has sufficient funds to make the true-up payments by including any additional ICLS in its quarterly filing with the Commission, which sets the contribution factor which funds universal service.

<sup>20</sup> See 47 C.F.R. § 54.903(a)(4). For example, actual data filed on July 31, 2003, would be used to true-up ICLS payments between January and December 2004.

<sup>21</sup> The Rural Consumer Choice Coalition (RCCC) states that a December 31<sup>st</sup> deadline is "unduly long." RCCC Comments at 2. RCCC does not explain why a December 31<sup>st</sup> deadline is unduly long, however, and does not address the Joint Petitioners' contention that incumbent carriers would have difficulty making accurate filings prior to December 31<sup>st</sup>.

<sup>22</sup> 47 C.F.R. § 54.903(a)(3).

<sup>23</sup> 47 C.F.R. § 54.903(a)(3).

<sup>24</sup> See Letter from Gina Harrison, NECA, to Bill Caton, FCC, filed March 1, 2002 (NECA March 1 ex parte letter). The changed correction date will be effective for June 30, 2003.

<sup>25</sup> The original Petition for Reconsideration requested that the Commission permit carriers to update their projected data on a quarterly basis. Joint Petition for Reconsideration at 2, Attachment at 2. In subsequent ex partes, NECA (continued....)

to the start of each funding year. First, the Commission normally approves or modifies the common line average schedule settlements formula proposed by NECA by June 15<sup>th</sup> of each funding year. Because this formula functions in the same manner as the common line revenue requirement for average schedule carriers, the specific resolution of this formula could have a significant effect on the amount of prospective ICLS received by average schedule carriers.<sup>26</sup> Second, NECA, as tariff agent on behalf of pooling carriers, continues to update projected cost and revenue data until its June 15<sup>th</sup> deadline for filing a common line tariff with the Commission.<sup>27</sup> The new deadline we adopt here will enable carriers to incorporate these updates into their ICLS filings, will permit calculation of more accurate ICLS amounts for the coming funding year, and will reduce the size of the true-ups required when actual cost and revenue data is available.<sup>28</sup>

8. We also conclude that permitting carriers, at their option, to update on June 30<sup>th</sup> their projected data for the past funding year will promote the Commission's goals of minimizing administrative burdens while promoting accuracy of ICLS payments.<sup>29</sup> This update will provide carriers an additional opportunity, in advance of the true-up process, to recognize changed circumstances that may have affected their projections.<sup>30</sup> This will have the effect of minimizing the size of the final true-up adjustments that will occur after actual cost and revenue data is filed. (Continued from previous page) —————

suggested that there be a single, voluntary opportunity for carriers to correct projected data on June 30<sup>th</sup>, stating that this would permit substantially more accurate projections, and reduce or eliminate the alleged need for additional quarterly updates. Letter from Richard A. Askoff, NECA, to Marlene H. Dortch, FCC, filed August 1, 2002 (NECA August 1 ex parte letter). NECA further requested that on June 30<sup>th</sup> carriers be permitted to file updates to projected data for the six-month period ending on that date and for the prior calendar year. *Id.* NECA suggests that these projections be used to perform interim adjustments to ICLS in advance of the true-up process. *Id.*

<sup>26</sup> Average schedule carriers do not file the detailed cost studies for tariffs that other rate-of-return carriers do. Instead, their common line pool settlements, the functional equivalent of a common line revenue requirement, are determined based on formulas annually proposed by NECA and approved or modified by the Commission. *See* 47 C.F.R. § 69.606.

<sup>27</sup> *See* NECA August 1 ex parte letter.

<sup>28</sup> In light of our decision to modify the June 30<sup>th</sup> deadline for correcting projections, we deny the Joint Petitioners' original request to permit voluntary updates on a quarterly basis. We conclude that the administrative costs of processing additional quarterly updates are unwarranted because significant changes to support amounts are unlikely, apart from the corrections available on June 30<sup>th</sup>. Moreover, ICLS amounts will ultimately be subject to true-up based on actual data.

<sup>29</sup> This new optional filing requirement will become effective upon receiving approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act, which typically takes at least 120 days. *See infra* para. 24.

<sup>30</sup> We note that the measure we adopt is similar to NECA's proposal to permit, on June 30<sup>th</sup>, the filing of updated projections for the prior calendar year and for the six months ending on that date. *See supra* note 25. We do not adopt NECA's specific proposal, however, because updating projected data for periods other than the funding year would make the process substantially more complicated and greatly increase the administrative costs associated with it while providing limited additional value for carriers. The only period of time covered by NECA's proposal that is not also covered by the measure we adopt is the January-to-June period of the prior calendar year. That period already would have been covered by a previous update, however, and so likely would not require yet another update.

The Administrator shall reflect both the corrections to projections for the upcoming funding year and updates to projections for the past funding year through adjustments to ICLS payments made during the first two quarters of the following calendar year.

9. In light of the modifications we adopt here, we eliminate the optional quarterly update of actual data adopted in the *MAG Order*.<sup>31</sup> The quarterly update of actual data was intended to permit carriers to accelerate the true-up process by recognizing actual costs and revenues earlier than would otherwise be possible. However, based on further consideration, we find that the ability to update actual data on a quarterly basis will not be useful for most carriers.<sup>32</sup> In addition, the quarterly update of actual data creates potential administrative costs that the measures we adopt herein make unnecessary.<sup>33</sup>

10. We deny the Petition for Reconsideration's request to move the deadline for carriers to file projected data with USAC from March 31<sup>st</sup> to July 15<sup>th</sup>.<sup>34</sup> At the time the Petition was filed, the Joint Petitioners contended that these changes were necessary because data used to develop projections were not available on March 31<sup>st</sup>.<sup>35</sup> The Petition for Reconsideration further suggested that carriers instead be allowed to rely on NECA to submit aggregate projections for the common line pool on March 31<sup>st</sup>.<sup>36</sup> NECA later indicated, however, that it had made changes to its own procedures that would ensure that carriers could make projections by March 31<sup>st</sup>, rendering unnecessary the request for the Commission to change the March 31<sup>st</sup> filing date.<sup>37</sup> In addition, consistent with USAC's administrative obligations and the necessity of calculating per-line support amounts, ICLS payments for the coming funding year must be based on individual carrier data, not aggregate data.<sup>38</sup> For these reasons, we deny the Joint Petitioners' request. We note that, under the rules adopted in the *MAG Order*, a rate-of-return carrier may elect to rely on

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<sup>31</sup> See *MAG Order*, 17 FCC Rcd at 19681 para. 160; 47 C.F.R. § 54.903(a)(4). This provision permits rate-of-return carriers to update their actual cost and revenue data on a quarterly basis for rolling annual periods and permits the more frequent calculation of true-up adjustments.

<sup>32</sup> Carriers must be able to perform quarterly cost separations studies in order to take advantage of this filing. In ex parte discussions, NECA indicated few rate-of-return carriers currently perform these studies or would likely begin performing them for this purpose.

<sup>33</sup> For USAC, the quarterly update raises difficult issues regarding the validation of actual data by creating multiple overlapping periods rather than a single annual period. Moreover, rolling true-ups introduce substantial complications to the true-up process.

<sup>34</sup> Joint Petition for Reconsideration, Attachment at 2.

<sup>35</sup> *Id.*, Attachment at 2.

<sup>36</sup> *Id.*, Attachment at 3 n.5.

<sup>37</sup> NECA March 1 ex parte letter.

<sup>38</sup> See *MAG Order*, 16 FCC Rcd at 19681 paras. 159-60; 47 C.F.R. §§ 54.702(h), 54.707.

NECA, as its agent, to submit ICLS data to USAC on its behalf.<sup>39</sup>

11. *Collection of Projected and Actual Revenue Data.* As requested by the Joint Petitioners, we also amend our rules to clarify that carriers must file common line revenue data to permit calculation of ICLS.<sup>40</sup> The Joint Petitioners correctly note that subsections 54.903(a)(3) and (a)(4) of the Commission's rules do not explicitly state that carriers must file revenue data in addition to cost data, even though revenue data is clearly necessary to calculate ICLS.<sup>41</sup> The *MAG Order* unambiguously granted USAC authority to collect any data necessary to administer the ICLS mechanism, including revenue data, and we do nothing here to change that.<sup>42</sup> We revise the rules only to more clearly state certain types of data that will be required. Accordingly, we amend subsections 54.903(a)(3) and (a)(4) to clarify that the types of data that carriers must file thereunder include common line revenue data.

12. *Apportionment of NECA Costs.* We deny the Joint Petitioners' request to amend section 69.603 to specify how NECA, as common line pool administrator, should apportion its administrative expenses among pooling carriers for the purposes of calculating individual study area common line revenue requirements.<sup>43</sup> In the *MAG Order*, the Commission amended its rules to ensure that NECA's administrative costs are appropriately allocated after the implementation of the *MAG Order*'s reforms.<sup>44</sup> The Joint Petitioners request that the Commission further amend section 69.603(h)(2) of its rules to specify how NECA should apportion its Category I.B. costs--those costs assigned to the common line pool--among members of the common line pool.<sup>45</sup> No comments were received on this issue, and, subsequently, NECA filed projected cost and revenue data with USAC which apportioned NECA Category I.B. expenses among its members.<sup>46</sup> We find that NECA has appropriate discretion under the Commission's existing rules to determine

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<sup>39</sup> In subsequent ex parte filings, NECA also requested that the Commission make NECA, rather than USAC, responsible for collecting ICLS data from members of the common line pool. NECA August 1 ex parte letter. We believe that the rules appropriately make USAC, the ICLS administrator, responsible for ICLS data collection. We also believe that carriers' ability to rely on NECA as filing agent minimizes burdens on carriers, while assuring accurate and efficient distribution of ICLS. Accordingly, we decline to amend our rules as requested by NECA.

<sup>40</sup> *Id.*, Attachment at 1-2.

<sup>41</sup> 47 C.F.R. § 54.903(a)(3), (4). A carrier's ICLS is calculated by subtracting the carrier's common line revenues from the carrier's revenue requirement. 47 C.F.R. § 54.901(a). The previous versions of subsections 54.903(a)(3) and (4), however, do not expressly refer to the revenue data necessary to calculate the carrier's common line revenue requirement. 47 C.F.R. § 54.903(a)(3), (4).

<sup>42</sup> See *MAG Order*, 16 FCC Rcd at 19682 para. 162 ("the Administrator shall determine the data that will be included in the projected common line revenue requirement filings").

<sup>43</sup> Joint Petition for Reconsideration, Attachment at 3 (proposing that "NECA Category I.B. expenses be apportioned to individual study areas on a *pro rata* basis").

<sup>44</sup> See 47 C.F.R. § 69.603(g).

<sup>45</sup> Joint Petition for Reconsideration, Attachment at 3.

<sup>46</sup> We are unaware of any objections to NECA's apportionment method.

how to apportion expenses among members of the common line pool in an equitable manner, and we see no need to amend our rules to prescribe a specific apportionment method at this time.

13. *Miscellaneous issues.* On our own motion, we further amend our rules to correct three errors.<sup>47</sup> First, we amend section 54.902 to correct erroneous cross-references.<sup>48</sup> Second, in order to conform our rules to the Commission's intent in the *MAG Order*, we amend section 54.307(a)(2) to include a reference to ICLS.<sup>49</sup> Third, we amend section 54.903(b)(3) to clarify that the reconciliation performed by USAC as part of its true-up process applies to the support amounts received by carriers, not their common line revenue requirements.<sup>50</sup>

### III. PROCEDURAL MATTERS

#### A. Supplemental Final Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *MAG Notice*.<sup>51</sup> Additionally, a Final Regulatory Flexibility Analysis (FRFA) was included in the *MAG Order*.<sup>52</sup> In compliance with the RFA, this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA included in the *MAG Order* to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA.

<sup>47</sup> We also dismiss as moot the Joint Petitioners' request that we eliminate duplicative 2002 certifications regarding the use of ICLS funds under section 54.904(d) of our rules. Joint Petition for Reconsideration, Attachment at 3 n.6. On June 13, 2002, the Commission adopted an order waiving the June 30, 2002, filing, eliminating the one-time duplicative certification contained in our rules. *Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Second Order on Reconsideration in CC Docket No. 00-256, 17 FCC Rcd 11593, 11594 para. 3 (2002).

<sup>48</sup> See Appendix A; 47 C.F.R. § 54.902.

<sup>49</sup> See Appendix A; 47 C.F.R. § 54.307(a)(2); see also *MAG Order*, 16 FCC Rcd at 19678 para. 151 ("In accordance with section 54.307 of our rules, per-loop equivalents of Interstate Common Line Support will be portable to competitive eligible telecommunications carriers.").

<sup>50</sup> See Appendix A; 47 C.F.R. § 54.903(b)(3).

<sup>51</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Notice of Proposed Rulemaking, 16 FCC Rcd 460, 468-72 paras. 25-37 (2001) (*MAG Notice*).

<sup>52</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19727-41, paras. 278-327 (2001) (*MAG Order*).



## **1. Need For, and Objective of, the Third Order on Reconsideration**

15. This Third Order on Reconsideration addresses a Petition for Reconsideration filed jointly by the National Exchange Carrier Association, the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United State Telecom Association (collectively, the Joint Petitioners). Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support.<sup>53</sup> Pursuant to that mandate, the Commission, in the *MAG Order*, adopted reforms to the interstate access rate structure and universal service support mechanisms for rate-of-return carriers.<sup>54</sup> In making these reforms, the Commission created the ICLS mechanism to provide explicit universal service support and adopted rules governing its administration.<sup>55</sup> We now conclude that certain changes to the rules governing ICLS's administration will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. In response to the concerns raised by the Joint Petitioners, we grant their request to amend section 54.903(a)(4) of our rules to move the deadline for filing actual common line cost and revenue data from July 31<sup>st</sup> to December 31<sup>st</sup> of each year. We also amend section 54.903(a)(3) of our rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30<sup>th</sup> of each year. As discussed below, these changes will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. Additionally, we adopt several minor amendments to sections 54.307, 54.902, and 54.903 of our rules in response to issues raised by the Joint Petitioners and on our own motion.

## **2. Summary of Significant Issues Raised by Public Comments**

16. In response to the Joint Petitioners' Petition for Reconsideration, we received one comment.<sup>56</sup> However, after careful consideration, we conclude that this comment does not raise significant small business-related issues.<sup>57</sup>

## **3. Description and Estimate of the Number of Small Entities to Which this Order on Reconsideration will Apply**

17. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>58</sup> The RFA

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<sup>53</sup> 47 U.S.C. § 254.

<sup>54</sup> *MAG Order*, 16 FCC Rcd at 19615-16 para. 1.

<sup>55</sup> *MAG Order*, 16 FCC Rcd at 19667-73 paras. 128-41.

<sup>56</sup> RCCC Comments.

<sup>57</sup> RCCC Comments (stating that Joint Petitioners' proposed extended deadline for filing actual cost and revenue data pursuant to section 54.903(a)(4) of the Commission's rules was "unduly long").

<sup>58</sup> 5 U.S.C. § 604(a)(3).

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>59</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>60</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>61</sup>

18. In the previous FRFA at paragraphs 289-300 of the *MAG Order*, we described and estimated the number of small entities that would be affected by the new universal service rules. These included local exchange carriers, interexchange carriers, competitive service providers, and providers of wireless telephony, rural radiotelephone service, fixed microwave services, and 39 GHz service. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 289-300 of the *MAG Order*.<sup>62</sup>

#### **4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

19. This Third Order on Reconsideration makes several changes to the reporting requirements for rate-of-return carriers receiving ICLS, but creates few additional burdens. First, this Third Order on Reconsideration changes the existing annual filing date for actual common line cost and revenue data from July 31<sup>st</sup> to December 31<sup>st</sup>, but adds no new requirements with respect to that filing.<sup>63</sup> Second, this Third Order on Reconsideration changes the existing deadline for filing voluntary corrections to projected common line cost and revenue data from April 10<sup>th</sup> to June 30<sup>th</sup>, but adds no new requirements with respect that filing.<sup>64</sup> We also create an opportunity for each carrier to voluntarily file an annual update to its projected data, but do not require a carrier to perform the update.<sup>65</sup> In connection with these changes, we also eliminate an existing opportunity for voluntary update of actual common line cost and revenue data on a quarterly basis.<sup>66</sup> Third, we amend our rules to clarify the data required for certain existing filing

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<sup>59</sup> 5 U.S.C. § 601(6).

<sup>60</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>61</sup> 15 U.S.C. § 632.

<sup>62</sup> *MAG Order*, 16 FCC Rcd at 19730-35 paras. 289-300.

<sup>63</sup> See *supra* para. 5.

<sup>64</sup> See *supra* para. 7.

<sup>65</sup> See *supra* para. 7.

<sup>66</sup> See *supra* para. 9.

requirements, but do not require the reporting of any additional data beyond that already filed by carriers.<sup>67</sup> These amendments apply equally to all entities affected, and therefore impose no different burdens on smaller entities.

## **5. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

20. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>68</sup>

21. We note that we do not find that this Third Order on Reconsideration creates a significant economic impact on small entities. We could therefore meet our obligations under the RFA by certifying that there is no significant economic impact on small entities, rather than including this SFRFA.<sup>69</sup> We nonetheless include this Supplemental FRFA to demonstrate that we have considered the impact of our action on small entities in adopting this Third Order on Reconsideration.

22. As noted above, the amendment to our rules adopted in this Order on Reconsideration does not have a significant impact on small entities. Our actions are intended primarily to reduce administrative burdens on small carriers associated with the ICLS mechanism, while also promoting the accurate and efficient distribution of ICLS. Our actions respond to concerns raised by representatives of small carriers. We did consider alternatives to the actions adopted herein but concluded that these alternatives would not reduce administrative burdens or increase the accuracy of ICLS as effectively as the measures we adopt. These alternatives include retaining the filing requirements currently codified in the Commission’s rules, extending the current March 31 date for filing projected cost and revenue data to July 15,<sup>70</sup> and permitting carriers to update their projected data on a quarterly basis.<sup>71</sup>

## **6. Report to Congress**

23. The Commission will send a copy of this Third Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional

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<sup>67</sup> See *supra* para. 11.

<sup>68</sup> 5 U.S.C. § 603(c)(1) - (c)(4).

<sup>69</sup> See generally 5 U.S.C. § 605.

<sup>70</sup> See *supra* para. 10.

<sup>71</sup> See *supra* n. 28.

Review Act.<sup>72</sup> In addition, the Commission will send a copy of this Third Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Third Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.<sup>73</sup>

#### **B. Paperwork Reduction Act**

24. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting or recordkeeping requirements or burdens to the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.


#### **IV. ORDERING CLAUSES**

25. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 10, 201-202, and 254 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 1-4, 10, 201-02, and 254, and section 1.3 and 1.103 of the Commission's rules, 47 C.F.R. §§ 1.3 and 1.103, this THIRD ORDER ON RECONSIDERATION is ADOPTED.

26. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A hereto, effective 30 days after their publication in the Federal Register. The collections of information are contingent upon approval by the Office of Management and Budget as necessary.

27. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>72</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>73</sup> See 5 U.S.C. § 604(b).

**APPENDIX A – FINAL RULES**

Part 54 of Title 47 of the Code for Federal Regulations is amended as follows:

**PART 54 – Universal Service****Subpart D – Universal Service Support for High Cost Areas**

1. Section 54.307(a)(2) is revised by amending the second sentence to read as follows:

**§ 54.307 Support to a competitive eligible telecommunications carrier**

(a) \* \* \*

(2) \* \* \* A competitive eligible telecommunications carrier that uses loops purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for the loop or the incumbent LEC's per-line payment from the high-cost loop support, LTS, and Interstate Common Line Support mechanisms, if any. \* \* \*

**Subpart K -- Interstate Common Line Support Mechanism for Rate-of-Return Carriers**

2. Section 54.902 is revised by amending the first sentence of subsection (a)(1), the first sentence of subsection (a)(2), the first and second sentences of subsection (a)(3), the first sentence of subsection (b)(1), the first sentence of subsection (b)(2), the first and second sentences of subsection (b)(3), the first sentence of subsection (c)(2), and the first and second sentences of subsection (c)(3) as follows:

**§ 54.902 Calculation of Interstate Common Line Support for transferred exchanges.**

(a) \* \* \*

- (1) Each carrier may report its updated line counts to reflect the transfer in the next quarterly line count filing pursuant to § 54.903(a)(1) of this subpart that applies to the period in which the transfer occurred. \* \* \*
- (2) Each carriers' projected data for the following funding year filed pursuant to § 54.903(a)(3) of this subpart shall reflect the transfer of exchanges.
- (3) Each carriers' actual data filed pursuant to § 54.903(a)(4) of this subpart shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3) of this subpart.

(b) \* \* \*

- (1) The acquiring carrier may report its updated line counts for the study area into which the acquired lines are incorporated in the next quarterly line count filing pursuant to § 54.903(a)(1) of this subpart that applies to the period in which the transfer occurred. \* \* \*
- (2) The acquiring carrier's projected data for the following funding year filed pursuant to § 54.903(a)(3) of this subpart shall reflect the transfer of exchanges.
- (3) The acquiring carrier's actual data filed pursuant to § 54.903(a)(4) of this subpart shall

reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3) of this subpart.

(c) \* \* \*

- (2) The acquiring carrier's projected data for the following funding year filed pursuant to § 54.903(a)(3) of this subpart shall reflect the transfer of exchanges.
- (3) The acquiring carrier's actual data filed pursuant to § 54.903(a)(4) of this subpart shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3) of this subpart.

4. Section 54.903 is revised by amending subsections (a)(3), (a)(4), and (b)(3) as follows:

**§ 54.903 Obligations of rate-of-return carriers and the Administrator**

(a) \* \* \*

- (3) Each rate-of-return carrier shall submit to the Administrator annually on March 31 projected data necessary to calculate the carrier's prospective Interstate Common Line Support, including common line cost and revenue data, for each of its study areas in the upcoming funding year. The funding year shall be July 1 of the current year through June 30 of the next year. Each rate-of-return carriers will be permitted to submit a correction to the projected data filed on March 31 until June 30 for the upcoming funding year. On June 30 each rate-of-return carrier will be permitted to submit to the Administrator an update to the projected data for the funding year ending on that date.
- (4) Each rate-of-return carrier shall submit to the Administrator on December 31 of each year the data necessary to calculate a carrier's Interstate Common Line Support, including common line cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly per-line Interstate Common Line Support amounts in the final two quarters of the following calendar year to the extent of any differences between the carrier's ICLS received based on projected common line cost and revenue data and the ICLS for which the carrier is ultimately eligible based on its actual common line cost and revenue data during the relevant period.

(b) \* \* \*

- (3) Perform periodic reconciliation of the Interstate Common Line Support provided to each carrier based on projected data filed pursuant to paragraph (a)(3) and the Interstate Common Line Support for which each carrier is eligible based on actual data filed pursuant to paragraph (a)(4).

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**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of  
Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,  
Third Order on Reconsideration*

I support the steps we take in this Order to change the deadlines for filing ICLS cost and revenue data. I believe our action will promote more accurate and efficient distribution of universal service support while minimizing administrative burdens on rate-of-return carriers. I write separately to reiterate my concern about the truncated process by which the MAG access reform plan was adopted. I had expected that the Commission would address outstanding questions about the impact of the MAG plan in its review of the many petitions for reconsideration filed by rural carriers, consumer and industry coalitions and state associations. Unfortunately, ten months after the implementation of ICLS, the Commission still has yet to address many of these petitions for reconsideration. Because we have a duty to be responsive to the rural carriers and communities impacted by the MAG plan, I urge the Commission to address these remaining petitions without further delay. I also urge the Commission to monitor closely the impact of this plan to ensure that it provides the stability necessary for investment in rural America.